

INCOME TAX

Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS

V.

TAXPAYERS

Taxpayer(s)

No.
SSN:

Daniel D. Mangiamele
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

This matter is before this administrative tribunal as a result of a timely Request for Hearing by TAXPAYERS (hereinafter referred to as the "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on July 5, 1995 for the tax year ending December 31, 1988, 1989, 1990, and 1991. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return as required by Illinois law. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file income tax returns on time, to pay the entire tax liability by the due date and failure to pay estimated tax respectively.

The hearing in this matter was held on November 17, 1995. The issues to be resolved are:

- (1) Whether the taxpayer failed to file an Illinois income tax return on time?
- (2) Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005, and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld in its entirety.

Findings of Fact:

- (1) For the subject taxable years 1990 and 1991 the taxpayer and his bookkeeper suffered heart attacks. Taxpayer's records were with his bookkeeper. The record indicates no health problems with taxpayer during the taxable years 1988 and 1989.

(2) Taxpayer's bookkeeper died in 1993.

(3) The Department of Revenue issued a Notice of Deficiency for the subject taxable years.

Dept. Ex. No. 2.

(4) Taxpayer did not file Illinois tax returns for the years 1988 thru 1991.

(5) The tax liability as issued should be recomputed giving taxpayer credit for taxes withheld on W-2 form. Taxpayer Ex. No. 4.

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). The taxpayer, as a Illinois resident who earned income in this state, was accordingly subject to Illinois income tax and was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

The Notice of Deficiency is *prima facie* correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill. App.2d 210 (3rd Dist. 1983). In order to overcome this *prima facie* correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978). The taxpayer has not met this burden in this case.

The taxpayers presented no evidence that the computation of tax due was incorrect. Taxpayer's only defense was that he and his bookkeeper suffered heart attacks during the 1990 and 1991 taxable period. The bookkeeper subsequently died in 1993. As a result of the bookkeepers death taxpayer was unable to secure his records, which were held by the bookkeeper's office, causing taxpayer the inability to file returns until June 1994. The record as established is silent as to taxpayer's health during the years 1988 and 1989 and I therefore find there is no reasonable explanation as to why taxpayer did not file these tax returns.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date and

failure to pay estimated tax respectively. A penalty under the above section of Illinois Revised Statutes, will not be imposed if taxpayer can establish that its failure to file a return was due to reasonable cause.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis, Rohrbaugh v. United States, 611 F. 2d 211 (7th Cir., 1979) and has generally been interpreted in Illinois to mean the exercise of ordinary business care and prudence, Dumont Ventilation Company v. Department of Revenue, 99 Ill. App. 3d 263, 425 N.E. 2d 606, 54 Ill. Dec. 741 (3rd Dist., 1981)

In this case taxpayer suffered three heart attacks in 1990 and 1991 and his bookkeeper who held taxpayer's records suffered a heart attack and subsequently died as a result thereof. Under these circumstances I find that taxpayer exercised ordinary business care and prudence which constitutes reasonable cause for its failure to file returns for the tax years 1990 and 1991, but not for the prior years 1988 and 1989. Dumont Ventilation Company v. Department of Revenue, 99 Ill. App. 3d, 425 N.E. 2d 606, (3rd Dist. 1981).

The Department assessed a Section 804 penalty because taxpayer did not make the required estimate payments. A Section 804 penalty may be avoided if this administrative tribunal can find a casualty, disaster or other unusual circumstance which would cause the imposition of such penalty to be against equity and good conscience. In this case I find the heart attacks of taxpayers and his bookkeeper would be appropriate reasons to waive a Section 804 penalty for the years 1990 and 1991 only.

Accordingly, I recommend that the deficiency as established should be upheld. As to the imposition of the Section 1001, 1005, and 804 penalties, I recommend they be withdrawn for the years 1990 and 1991 only and assessed for the years 1988 and 1989.

Daniel D. Mangiamele
Administrative Law Judge